



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

March 27, 1990

Mr. Ray L. Goad
Executive Director
Commission on Fire Protection
Personnel Standards and Education
510 S. Congress, Suite 406
Austin, Texas 78704

LO-90-12

Dear Mr. Goad:

You ask first whether volunteer fire department personnel under contract with the City of Houston to provide fire protection services in an area within the city limits may be certified by the Commission on Fire Protection Personnel Standards and Education (the commission) under chapter 416 of the Government Code. Pending litigation, Rodriguez and Dunham v. City of Houston, No. 89-031392 (Dist.Ct. of Harris County, 125th Judicial Dist. of Texas.), involves issues as to the legality of the City of Houston thus contracting with the volunteer fire department in question. It is the longstanding policy of this office not to issue opinions on questions which are the subject of pending litigation. We think that the disposition of the litigation here may have a bearing on the resolution of your question regarding commission certification of the volunteer fire department's personnel. Therefore, we decline to address your first question.

You also ask whether the commission may certify full-time paid employees of The Woodlands Fire Department. You say that "The Woodlands" is a privately developed, unincorporated community located north of Houston. We assume for purposes of this opinion that the employees in question are not also employed elsewhere in a fire protection capacity.

Section 416.031(d) of the Government Code provides that "the commission may certify persons who are qualified under [Gov't Code ch. 416] to be fire protection personnel." Section 416.001(4) provides that in chapter 416

'Fire protection personnel' means:

(A) permanent, fully paid, full-time law enforcement officers designated as fire and

arson investigators by an appropriate local authority;

(B) aircraft crash and rescue fire protection personnel; or

(C) permanent, fully paid, full-time fire department employees who are not secretaries, stenographers, clerks, budget analysts, or similar support staff persons or other administrative employees and who are assigned duties in one or more of the following categories:

- (i) fire suppression;
- (ii) fire inspection;
- (iii) fire and arson investigation;
- (iv) marine fire fighting;
- (v) aircraft crash fire fighting and rescue;
- (vi) fire training;
- (vii) fire education;
- (viii) fire administration; and
- (ix) any other position necessarily or customarily related to fire prevention and suppression.

We assume, absent more specificity in your question, that The Woodlands Fire Department personnel in question are not "law enforcement officers designated as fire and arson investigators by a local authority" under subpart (A) of section 416.001(4).

"Aircraft crash and rescue personnel" under subpart (B) of the definition of "fire protection personnel" as defined in subsection (1) of section 416.001, are "local governmental employees." Subsection (5) provides:

'Local government' means a municipality, a county, a special-purpose district or authority, or any other political subdivision of the state.

"The Woodlands" does not appear to be a "local government" within the meaning of those provisions.

Similarly, The Woodlands Fire Department personnel could not be considered "permanent, fully paid, full-time fire department employees" under subpart (C) of the subsection (4) definition of "fire protection personnel" since "fire department" is defined in subsection (3) of the section to mean

a department of a local government with permanent, fully paid, full-time employees organized to prevent or suppress fires.
(Emphasis added.)

The Woodlands Fire Department employees in question do not come under the definitions of "fire protection personnel" in subparts (B) and (C) of section 416.001(4) since such personnel must be employed by a "local government." On the facts you present, "The Woodlands" is not a local government.

Very truly yours,



William Walker
Assistant Attorney General
Opinion Committee

APPROVED: Sarah Woelk, Chief
Letter Opinion Section

APPROVED: Rick Gilpin, Chief
Opinion Committee

WW/mc
Ref.: RQ-1909
ID# 8560